

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RUSSELL L. O'BRIEN,

Plaintiff,

v.

COMMANDER GORDON KARLSSON,
et al.,

Defendants.

CASE NO. C13-2059-TSZ-MAT

REPORT AND RECOMMENDATION

INTRODUCTION AND SUMMARY CONCLUSION

Plaintiff Russell O'Brien is a state prisoner who is currently confined at the Monroe Correctional Complex in Monroe, Washington. He brings this action under 42 U.S.C. § 1983, seeking money damages for alleged violations of his civil rights which he claims occurred during the course of his confinement at the King County Correctional Facility in 2013. Plaintiff identifies as defendants in this action Commander Gordon Karlsson, Sergeant Casey Allred, Corrections Officer Vincent Johnson, and Law Librarian Deborah Ogle.

Defendants have filed a motion for summary judgment seeking dismissal of all claims asserted by plaintiff in his amended complaint. Plaintiff, despite having been advised of the summary judgment requirements pursuant to *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998), has

1 filed no response to defendants' motion. The Court, having now carefully reviewed defendants'
2 motion, and the balance of the record, concludes that defendants' motion for summary judgment
3 should be granted and that plaintiff's amended complaint and this action should be dismissed
4 with prejudice.

5 FACTS

6 Plaintiff has been incarcerated at the King County Correctional Facility ("KCCF") on
7 numerous occasions since 1992. (Dkt. 27 at 2.) His most recent period of incarceration at KCCF
8 began on April 17, 2013, and ended on October 8, 2013, when plaintiff was apparently
9 transferred into the custody of the Washington Department of Corrections. (*Id.*)

10 1. Facts Re: Workplace Safety/Mental Health Care

11 Plaintiff was an inmate worker at KCCF during his most recent period of incarceration at
12 KCCF. Inmate worker status is a privilege afforded to qualified minimum custody inmates who
13 meet the screening criteria and are medically cleared by Jail Health Services ("JHS"). (Dkt. 27
14 at 2.) Inmates selected as inmate workers watch a safety video which addresses topics such as
15 safety precautions, biohazards, MRSA, and cleanliness. (*Id.*) Inmates are thereafter provided
16 training on the job as needed. (*Id.*)

17 Plaintiff was first assigned to inmate worker duties in the kitchen, but was removed from
18 that position after he was infraacted for damaging a kitchen blower on May 9, 2013. (*Id.*)
19 Plaintiff was subsequently reassigned to janitorial duties for the seventh floor at KCCF, the floor
20 which houses inmates with mental health issues. (*Id.*) Assignment to janitorial duties on the
21 seventh floor is considered non-standard work because of the high likelihood that the worker will
22 come into contact with various bodily fluids and feces. (Dkt. 27 at 2.) Inmates who are assigned
23 to perform non-standard work are compensated at a higher rate of pay than inmates performing

1 standard work and inmates often choose non-standard work in order to receive the higher rate of
2 pay. (*Id.*) Before being assigned to the seventh floor, inmate workers are informed that they will
3 be working with inmates who have mental health issues, that they will be performing non-
4 standard work, and that they will likely have to clean up things such as feces and bodily fluids.
5 (*Id.* at 2-3.) Inmates may refuse the assignment. (*Id.* at 3.) Plaintiff was provided the requisite
6 information before being assigned to janitorial duties on the seventh floor and he accepted the
7 assignment. (*Id.*)

8 Plaintiff's janitorial duties on the seventh floor included cleaning the day room, sinks,
9 showers, toilets, and floors, and emptying the trash. (*Id.*) Inmate workers are provided cleaning
10 supplies and gloves. Protective suits, eye protection, masks, and boots are also available for
11 inmate workers to wear. (*Id.*)

12 On June 16, 2013, plaintiff submitted a grievance in which he complained that another
13 offender had exposed his genitals to plaintiff while plaintiff was performing his janitorial duties.
14 (*See* Dkt. 28, Ex. A.) Plaintiff indicated in his grievance that this experience was particularly
15 traumatic for him because he had been sexually abused as a child. (*Id.*) Plaintiff requested that
16 he be provided with counseling as well as compensation for his mental distress. (*Id.*) On June
17 25, 2013, KCCF employee, Sergeant Mohammed, replied to the grievance and advised plaintiff
18 that he would be moved to perform work on other floors and that he should make sure to kite the
19 JHS staff if he needed their help. (*Id.*)

20 On June 27, 2013, plaintiff filed a kite concerning the incident on June 16, 2013. (*See*
21 Dkt. 28, Ex. C.) After receiving the kite, Sergeant Allred met with plaintiff to discuss the
22 incident and to find out what plaintiff needed from KCCF. (*Id.*, Ex. B.) Sergeant Allred
23 contacted JHS and a nurse responded to speak with plaintiff about his mental health issues. (*See*

1 *id.*) KCCF Captain Todd Clark, having been made aware of plaintiff's concerns on June 27,
2 2013, requested that Dr. Young from Jail Psychiatry also contact plaintiff. (*Id.*, Ex. D.) Dr.
3 Young contacted plaintiff on the same date and provided plaintiff with information to assist him
4 with his mental health problems. (*Id.*)

5 During Sergeant Allred's contact with plaintiff on June 27, 2013, plaintiff made
6 comments that caused Sergeant Allred to be concerned for plaintiff's safety, and Sergeant Allred
7 therefore had plaintiff moved out of inmate worker housing to a different housing unit. (*Id.*, Ex.
8 B.) Plaintiff was not reassigned to other inmate worker duties after he was moved from inmate
9 worker housing on June 27, 2013. (Dkt. 27 at 3.)

10 Plaintiff submitted multiple grievances concerning the incident on June 16, 2013 and on
11 July 2, 2013, Commander Karlsson sent a letter to plaintiff responding to his various grievances.
12 (*Id.*, Ex. C.) Commander Karlsson noted in his letter plaintiff's request for counseling service
13 and indicated that he had confirmed with JHS that plaintiff had, in fact, been contacted on
14 several occasions by JHS to address his concerns arising out of the incident. (*Id.*) Commander
15 Karlsson also encouraged plaintiff to continue his contact with JHS to ensure that his mental
16 health concerns were appropriately addressed. (*Id.*)

17 Plaintiff continued to submit grievances concerning the June 16, 2013 incident, even after
18 presumably receiving Commander Karlsson's letter. (*See id.*, Ex. D.) Plaintiff also submitted
19 grievances complaining that his change in housing assignment was erroneous and retaliatory in
20 nature. (*See id.*) On July 23, 2013, Captain Todd Clark sent plaintiff a letter advising him that
21 his various grievances had been investigated and closed. (Dkt. 28, Ex. D.) Plaintiff was
22 cautioned that further submission of grievances asserting the same complaint may be considered
23 an abuse of the grievance process and could result in disciplinary action. (*Id.*) Plaintiff was

1 encouraged to kite JHS if he required further health related services. (*Id.*)

2 2. Facts Re: Legal Workstation

3 During the course of his most recent incarceration at KCCF, plaintiff also submitted
4 numerous kites requesting access to the legal workstation. (Dkt. 26 at 2.) Defendant Deborah
5 Ogle, an administrative specialist at KCCF, is responsible for responding to such requests and for
6 scheduling inmates to use the legal workstation in accordance with King County Department of
7 Adult and Juvenile Detention (“DAJD”) policy. (*Id.* at 1.) In her responses to plaintiff’s kites,
8 Ms. Ogle informed plaintiff that pro se inmates were given scheduling priority and that he had
9 been placed on a waitlist for represented inmates. (*Id.* at 2.) Plaintiff was also advised that in
10 order to receive scheduling priority he would have to provide proof of his pro se status. (*Id.*)
11 Plaintiff never provided any proof of his pro se status and therefore never received scheduling
12 priority for the legal workstation. (*Id.*) Plaintiff was scheduled to use the workstation on one
13 occasion in June 2013, but plaintiff missed the appointment and was placed back on the waitlist.
14 (*Id.* at 3.) Plaintiff’s name did not reach the top of the list again prior to his release from KCCF
15 in October 2013.

16 DISCUSSION

17 Plaintiff appears to allege in his amended complaint that during his period of
18 incarceration at KCCF in 2013 he was (1) denied a safe work environment and proper training,
19 (2) denied treatment for mental health issues related to his inmate work assignment, (3) removed
20 from the inmate worker program in retaliation for voicing concerns about conditions encountered
21 as an inmate worker and for requesting help to deal with the stress associated with being an
22 inmate worker, and (4) denied access to the legal workstation. (Dkt. 10 at 3-4.) Defendants
23 argue in their motion for summary judgment that plaintiff’s claims should be dismissed because

1 he has failed to establish any violation of his federal constitutional rights.

2 Motion for Summary Judgment

3 Summary judgment is appropriate when, viewing the evidence in the light most favorable
4 to the nonmoving party, there exists “no genuine dispute as to any material fact” such that “the
5 movant is entitled to judgment as a matter of law.” *See* Fed. R. Civ. P. 56(a); *Anderson v.*
6 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Material facts are facts which might affect the
7 outcome of the pending action under governing law. *See Anderson*, 477 U.S. at 248. Genuine
8 disputes are those for which the evidence is such that “a reasonable jury could return a verdict
9 for the nonmoving party.” *Id.*

10 In response to a properly supported summary judgment motion, the nonmoving party
11 may not rest upon mere allegations or denials in the pleadings, but must set forth specific facts
12 demonstrating a genuine issue of fact for trial and produce evidence sufficient to establish the
13 existence of the elements essential to his case. *See* Fed. R. Civ. P. 56(e). A mere scintilla of
14 evidence is insufficient to create a factual dispute. *See Anderson*, 477 U.S. at 252. In ruling on a
15 motion for summary judgment, the court may not weigh the evidence or make credibility
16 determinations. *Anderson*, 477 U.S. at 248.

17 Section 1983 Standard

18 In order to set forth a *prima facie* case under § 1983, a plaintiff must establish a
19 deprivation of a federally protected right. *Baker v. McCollan*, 443 U.S. 137, 140 (1979). The
20 particular harm complained of must be scrutinized in light of specifically enumerated rights. *Id.*
21 That a plaintiff may have suffered harm, even if due to another’s negligent conduct, does not
22 itself demonstrate a violation of constitutional protections. *See, e.g., Davidson v. Cannon*, 474
23 U.S. 344, 347 (1986) (“[W]here a government official is merely negligent in causing the injury,

1 no procedure for compensation is constitutionally required.”). To permit actions based upon
2 mere negligence “would make of the Fourteenth Amendment a font of tort law to be
3 superimposed upon whatever systems may already be administered by the States.” *Paul v.*
4 *Davis*, 424 U.S. 693, 701 (1976).

5 A plaintiff must also allege facts in his § 1983 complaint showing how individually
6 named defendants caused or personally participated in causing the harm alleged in the complaint.
7 *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981). A defendant cannot be held liable under §
8 1983 solely on the basis of supervisory responsibility or position. *Monell v. Department of*
9 *Social Servs., of City of New York*, 436 U.S. 658, 691-694 (1978). The causation requirement of
10 § 1983 is satisfied only if a plaintiff demonstrates that a defendant did an affirmative act,
11 participated in another's affirmative act, or omitted to perform an act which he was legally
12 required to do that caused the deprivation complained of. *Arnold*, 637 F.2d at 1355 (quoting
13 *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978)).

14 Workplace Safety

15 Plaintiff alleges in his amended complaint that he was denied a safe work environment
16 while working as a trustee at KCCF. (Dkt. 10 at 3-4.) More specifically, plaintiff complains that
17 he was denied proper training “to handle gore, blood, vomit, fecal matter, menstrual [sic] smears
18 and other body fluids.” (*Id.* at 4.) He also complains that he was denied proper cleaning
19 products, though he notes only that “the machine to spray cleaner and vaccum [sic] was out of
20 order for at least two months.”

21 It appears that plaintiff was a pretrial detainee at KCCF at times relevant to his complaint
22 and, thus, his claim regarding workplace safety arises under the Due Process Clause of the
23 Fourteenth Amendment. *Carnell v. Grimm*, 74 F.3d 977, 979 (9th Cir. 1996). The Due Process

1 Clause imposes, at a minimum, the same duty that the Eighth Amendment imposes. *See id.* The
2 Eighth Amendment imposes a duty upon prison officials to provide humane conditions of
3 confinement. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). This duty includes ensuring that
4 inmates receive adequate food, clothing, shelter and medical care, and taking reasonable
5 measures to guarantee the safety of inmates. *Id.* at 832. In order to establish an Eighth
6 Amendment violation, a prisoner must show that prison officials knew of and disregarded a
7 substantial risk of serious harm to his health or safety. *Id.* at 837.

8 Defendants maintain that plaintiff was sufficiently trained to conduct his janitorial duties
9 at KCCF and that he had ready access to the cleaning supplies necessary to perform his janitorial
10 duties and to safeguard his health. Defendants have submitted in support of their summary
11 judgment motion evidence demonstrating that inmate workers are provided safety information in
12 a video format which addresses topics such as safety precautions, biohazards, MRSA and
13 cleanliness. The evidence also demonstrates that inmate workers are given cleaning supplies and
14 gloves, and that protective suits, eye protection, masks, and boots are available to wear as well.
15 Plaintiff has come forth with no evidence to refute the evidence presented by defendants. The
16 record is devoid of any evidence demonstrating that defendants knew of and disregarded a
17 substantial risk of serious harm to plaintiff's health or safety as it relates to his inmate worker
18 responsibilities. Accordingly, defendants are entitled to summary judgment with respect to
19 plaintiff's claims regarding workplace safety.

20 Mental Health Treatment

21 Plaintiff also alleges in his amended complaint that he wasn't provided mental health
22 treatment and therapy to assist him in dealing generally with the conditions he was subjected to
23 in performing his janitorial duties on the seventh floor, or to assist him more specifically in

1 dealing with an episode of alleged sexual harassment that occurred while he was performing his
2 janitorial duties.

3 As noted above, because plaintiff was apparently a pretrial detainee at times relevant to
4 his amended complaint, his claims regarding the alleged failure to provide mental health
5 treatment arise under the Due Process Clause but Eighth Amendment standards apply. *Carnell v.*
6 *Grimm*, 74 F.3d 977, 979 (9th Cir. 1996). In order to prevail on any claim that defendants
7 violated his right to adequate medical care, plaintiff must satisfy a two-part test containing both
8 an objective and a subjective component. The objective component requires proof that the
9 alleged wrongdoing was objectively "sufficiently serious" to establish a constitutional violation.
10 *Farmer*, 511 U.S. at 834 (citing *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)). A medical need is
11 deemed serious if the failure to treat the condition could result in further significant injury or the
12 "unnecessary and wanton infliction of pain." *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir.
13 1992) (citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)).

14 The subjective component requires proof that the prison official acted with a sufficiently
15 culpable state of mind. *Farmer*, 511 U.S. at 834. The state of mind requirement under the
16 subjective component of the applicable standard has been defined as "deliberate indifference" to
17 an inmate's health or safety. *Id.* In order to establish deliberate indifference, a plaintiff must
18 show a purposeful act or failure to act on the part of prison officials. *McGuckin*, 974 F. 2d at
19 1060.

20 Defendants first argue with respect to plaintiff's claim alleging a denial of mental health
21 services that they are not proper parties regarding the denial of such services. Defendants note
22 that medical care for inmates at KCCF is provided by JHS, which is a part of the Seattle-King
23 County Department of Public Health, a separate county agency from the DAJD which employs

1 defendants. Defendants note that though they may refer inmates to JHS for medical care, they
2 have no medical training and do not provide any direct medical care to inmates at KCCF. While
3 it is clear that none of the named defendants is directly responsible for providing medical care or
4 mental health care to inmates, to the extent plaintiff intends to claim that some defendants denied
5 him access to mental health treatment he has arguably stated a constitutional claim. *See Estelle*,
6 429 U.S. at 104-05.

7 Plaintiff appears to assign responsibility for the alleged lack of mental health treatment to
8 Commander Karlsson and to Sergeant Allred. However, plaintiff fails to offer any evidence
9 demonstrating that these two defendants interfered in any way with his ability to obtain mental
10 health treatment. In fact, it appears from the evidence in the record that both of these individuals
11 made efforts to facilitate plaintiff's access to such treatment by contacting JHS to ensure that
12 plaintiff was receiving the care he needed. Plaintiff makes no showing that either Commander
13 Karlsson or Sergeant Allred was deliberately indifferent to any serious medical need.
14 Accordingly, defendants are entitled to summary judgment with respect to this claim as well.

15 Retaliation

16 Plaintiff alleges in his amended complaint that he was terminated from his inmate worker
17 position in retaliation for pursuing grievances and for seeking help to manage the mental trauma
18 associated with working around mentally ill inmates. Plaintiff does not make clear in his
19 amended complaint which of the named defendants engaged in the alleged retaliatory conduct. It
20 appears that Sergeant Allred may be implicated in this claim. In addition, the Court presumes,
21 based on materials submitted by defendants in support of their motion for summary judgment,
22 that the individual identified by plaintiff in his amended complaint as C.O. B. Johnson is also
23 implicated in this claim.

1 In order to prevail on a retaliation claim under § 1983, a plaintiff must show he was
2 retaliated against for exercising his constitutional rights, that the retaliatory action chilled the
3 exercise of his First Amendment rights, and that the retaliatory action did not advance legitimate
4 penological goals, such as preserving institutional order and discipline. *Rhodes v. Robinson*, 408
5 F.3d 559, 567-68 (9th Cir. 2005); *Resnick v. Hayes*, 213 F.3d 443, 449 (9th Cir. 2000); *Barnett v.*
6 *Centoni*. 31 F.3d 813, 816 (9th Cir. 1994). Thus, in order to survive summary judgment, the
7 plaintiff bears the burden of showing that there was no legitimate penological objective to
8 defendant's actions. *See Pratt v. Rowland*, 65 F.3d 802, 806 (9th Cir. 1995). The Court
9 evaluates a retaliation claim in light of the deference accorded prison officials. *Id.* at 807.

10 The evidence submitted by defendants in support of their summary judgment motion
11 indicates that Sergeant Allred made the decision to move plaintiff out of inmate worker housing
12 on June 27, 2013 out of concern for plaintiff's safety. (Dkt. 28, Ex. B.) Once plaintiff was
13 removed from inmate worker housing, he was not reassigned to other inmate duties. (Dkt. 27 at
14 3.) On July 23, 2013, plaintiff met with Classification Officer Vincent Johnson for purposes of a
15 review hearing and plaintiff was provided an opportunity to explain why he felt he should be
16 reassigned to another inmate worker position. (*See id.* at 4.) Defendant Johnson advised
17 plaintiff that given his removal from his kitchen inmate worker duties for a rule infraction, and
18 his incompatibility with janitorial duties, he would not be reassigned to another inmate worker
19 position. (*Id.*)

20 Plaintiff offers no evidence of any retaliatory motive underlying his removal from his
21 inmate worker duties. It is abundantly clear from the record before this Court that plaintiff was
22 unsuited for janitorial duties. Given plaintiff's earlier termination from another inmate worker
23 assignment for a rule infraction, the decision not to assign plaintiff to another inmate worker

1 position when he complained of difficulties inherent in the janitorial position does not suggest a
2 retaliatory motive. It suggests instead that the decision was made for legitimate penological
3 reasons and plaintiff has offered no evidence to rebut that conclusion. Accordingly, defendants
4 are entitled to summary judgment with respect to plaintiff's retaliation claim.

5 Legal Access

6 Plaintiff asserts in his amended complaint that defendant Deborah Ogle failed to grant
7 him access to the legal work station at KCCF. While plaintiff does not say so expressly, the
8 Court presumes that plaintiff intends to allege a violation of his right of access to the courts. In
9 *Bounds v. Smith*, 430 U.S. 817 (1977), the Supreme Court acknowledged that inmates have a
10 constitutional right of meaningful access to the courts premised on the due process clause. *Id.* at
11 821. The Supreme Court subsequently made clear that in order to adequately allege a cause of
12 action for deprivation of the right of access to the courts, an inmate must demonstrate that he
13 suffered some actual injury to his right of access. *Lewis v. Casey*, 518 U.S. 343 (1996).

14 The Supreme Court explained in *Lewis* that *Bounds* did not create an abstract, free-
15 standing right to a law library or to legal assistance, and that an inmate therefore could not
16 establish relevant actual injury "simply by establishing that his prison's law library or legal
17 assistance program [was] sub-par in some theoretical sense." *Lewis*, 518 U.S. at 351. Rather, in
18 order to establish a *Bounds* violation, an inmate was required to demonstrate that the alleged
19 shortcomings in the prison's legal access scheme had hindered, or were hindering, his ability to
20 pursue a non-frivolous legal claim. *Id.* at 354-55.

21 Plaintiff fails to demonstrate that he suffered any actual injury to his right of access while
22 confined at KCCF. Plaintiff contends in his amended complaint that he was denied "legal
23 research," but he does not explain what the intended purpose of his legal research was. A review

1 of the documentation attached to Ms. Ogle's declaration in support of defendants' summary
2 judgment motion suggests that some of plaintiff's requests for access to the legal workstation
3 were related to his criminal matter while others indicated a desire to pursue a civil matter. To the
4 extent plaintiff sought access for purposes of researching issues related to his criminal
5 proceedings, the record makes clear that plaintiff had an attorney representing him in those
6 proceedings and, thus, he establishes no actual injury.

7 As to any civil action plaintiff may have wished to pursue, he fails to establish that the
8 alleged denial of access to the legal research workstation hindered his ability to pursue a non-
9 frivolous legal claim. As nothing in the record demonstrates that plaintiff suffered any actual
10 injury to his right of access while he was confined at KCCF, defendants are entitled to summary
11 judgment with respect to plaintiff's access to courts claim.

12 Pendant State Law Claims

13 Plaintiff indicated in his amended complaint that his intention was to bring a suit for
14 "negligence" and for "nuisance" as well as for violations of his civil rights. This assertion
15 suggests that plaintiff may have been intending to assert state law claims along with the claims
16 which this Court has construed as implicating federal constitutional concerns. The Supreme
17 Court has stated that federal courts should refrain from exercising their pendent jurisdiction
18 when the federal claims are dismissed before trial. *United Mine Workers v. Gibbs*, 383 U.S. 715,
19 726 (1966). Because this Court has concluded that plaintiff's federal constitutional claims
20 should all be dismissed, any intended state law claims should be dismissed as well.

21 CONCLUSION

22 Defendants have properly supported their summary judgment motion by pointing out
23 through argument, declarations, and exhibits that "that there [was] an absence of evidence to

1 support” plaintiff’s claims. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In light of
2 the evidence produced by defendants in support of their summary judgment motion, the burden
3 was on plaintiff to produce authenticated materials in opposition to the motion that “set forth
4 specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e); *see Celotex*,
5 477 U.S. at 323. Plaintiff has not satisfied that burden and, thus, defendants are entitled to
6 summary judgment.

7 Based upon the foregoing, this Court recommends that defendants’ motion for summary
8 judgment be granted and that plaintiff’s amended complaint and this action be dismissed with
9 prejudice as to any intended federal constitutional claims and without prejudice as to any
10 intended state law claims. A proposed order accompanies this Report and Recommendation.

11 Objections to this Report and Recommendation, if any, should be filed with the Clerk and
12 served upon all parties to this suit within **twenty-one (21) days** of the date on which this Report
13 and Recommendation is signed. Failure to file objections within the specified time may affect
14 your right to appeal. Objections should be noted for consideration on the District Judge’s
15 motions calendar for the third Friday after they are filed. Responses to objections may be filed
16 within **fourteen (14) days** after service of objections. If no timely objections are filed, the
17 matter will be ready for consideration by the District Judge on **November 14, 2014**.

18 DATED this 21st day of October, 2014.

19
20 

21 Mary Alice Theiler
22 Chief United States Magistrate Judge
23